

Introduced by Senator Pavley

February 21, 2014

An act to amend Sections 607, 677, 2006, 2207, 2208, 2733, 2770, 2772, 2773.1, 2774, 2774.1, and 2774.4 of, and to add Sections 2006.5 and 2717.5 to, the Public Resources Code, relating to mining.

LEGISLATIVE COUNSEL'S DIGEST

SB 1270, as introduced, Pavley. Surface mining operations.

(1) Under existing law, the Department of Conservation, under the supervision of the Director of Conservation, is comprised of various entities, including the State Mining and Geology Board, and the work of the department is divided into divisions including the California Geological Survey and the Office of Mine Reclamation. Existing law requires the board to nominate, and the director to appoint, the State Geologist to advise the director regarding technical, scientific, and engineering issues, including the scientific quality of the products and activities of the California Geological Survey, and requires the State Geologist to meet specific qualifications.

This bill would instead require an unspecified individual or entity to appoint the State Geologist and would make that individual responsible for the management of the California Geological Survey. The bill would change the qualifications for that person. The bill would also designate the Office of Mine Reclamation as the Division of Mines, would require an unspecified individual or entity to appoint a State Mine Inspector to be responsible for the management of the Division of Mines, and would prescribe the specific qualifications for that person.

(2) Existing law requires the owner of operator of a mining operation to forward annually to the director and the lead agency a report that provides specified information with respect to the mining operation.

This bill would require that report to be submitted to the State Mine Inspector and the lead agency.

(3) The Surface Mining and Reclamation Act of 1975, administered by the board, prohibits a person, with exceptions, from conducting surface mining operations unless, among other things, a reclamation plan, as specified, is submitted to and approved by, and financial assurances for reclamation have been approved by, the lead agency for the operation. Existing law provides an appeals process for decisions of the lead agency in approval or denial of approval of a reclamation plan.

This bill would instead make the director responsible for reviewing and approving financial assurances in surface mining operations and would require the director to take specified actions in seeking forfeiture of those financial assurances. The bill would also provide an appeals process for the director's approval or denial of approval of financial assurances. The bill would require a portion of the reclamation plan to be certified by a registered professional geologist, geophysicist, or professional engineer and to include a schedule with time limits for completing reclamation, as specified, and would require the lead agency to determine a time period for reclamation to be complete in certain circumstances. By imposing additional duties on lead agencies, this bill would impose a state-mandated local program.

(4) Existing law requires the lead agency to conduct an inspection of a surface mining operation with 6 months of receipt by the lead agency of the annual report described in (2) above. Under existing law, if the lead agency or the director determines that a surface mining operation is not in compliance, the lead agency or director is required to notify the operator of that violation.

This bill would instead require the director to conduct an inspection of those operations withing one year of receipt of the report by the State Mine Inspector. The bill would require the notice of violation to include, among other things, specific remedial steps to be taken to correct the noncompliance and also information on time to comply.

(5) Existing law requires the board to assume the powers and duties under the act of the lead agency if, following a public hearing, as prescribed, the board finds deficiencies in the lead agency's implementation and enforcement of the act.

This bill would authorize a lead agency to unilaterally and voluntarily relinquish its responsibilities under the act and would require the board

to assume those responsibilities. The bill would also authorize the lead agency to resume its relinquished role if certain requirements are met.

(6) Existing law requires the board to adopt a schedule of fees to cover the department's costs of carrying out specified provisions and to impose an annual reporting fee on each mining operation, not to exceed \$4,000 annually for any single mining operation and not be less than \$100. Existing law requires the board to adjust the fees if the director determines the resources collected were greater to or less than the department's costs.

This bill would require that an annual reporting fee on each mining operation not be less than \$1,000 and would require the fee to be based on a cost per acre as determined by the board. The bill would authorize the board to recommend expenditures of these funds as part of the annual budget process and would require the board to adjust the fees if the State Mine Inspector determines the revenues collected were greater to or less than the department's costs.

(7) Existing law requires the department to quarterly publish in the California Regulatory Notice Register, or otherwise make available, upon request, to the Department of General Services or any other state or local agency, a list identifying the status of compliance of certain surface mining operations, as specified. Existing law also prohibits a state agency from acquiring or utilizing mined material, or from contracting with a person utilizing these materials, as specified, unless the material is produced from a mining operation on that list and that meets certain requirements.

This bill would authorize an affected mine operator, a lead agency with jurisdiction over the operation, or an affected person to appeal to the board the department's determination regarding a mining operation's placement on, removal from, or denial of placement on or removal from, the list.

(8) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares the following:

(a) Since its passage, the implementation of the Surface Mining and Reclamation Act of 1975 has depended on coordinated administrative efforts by local governments, the Department of Conservation, and the State Mining and Geology Board. Two of the major goals of the act are to encourage production and conservation of minerals in California, and to assure reclamation of mined lands.

(b) The essential components of the act for each of the more than 2,000 mines in California are annual inspections, reclamation plans for mines that have ceased production, and a financial surety mechanism to pay for reclamation in the event the operator is unable or fails to do so.

(c) It is the intent of the Legislature that siting decisions for mines and the approval of reclamation plans for those mines remain with local governments.

(d) The act provides for approval procedures for financial assurances and reclamation plans that depend on active inspections, remediation of compliance shortfalls, and appropriate updates to financial assurance commitments. Based on a review of official state data, industry and government analysts agree that the goals of the act are not being achieved because of multiple failures in the internal processes of this important legislation. As examples:

(1) Twenty-five percent of mines that have closed have not begun reclamation. This includes about 100 mines in the state.

(2) Inspection rates by counties who serve as lead agencies under the act, over a multiyear period, range from 66 percent to 74 percent, inclusive, but 12 counties have inspection rates below 50 percent.

(3) Data on inspections by cities that serve as lead agencies under the act, over the same multiyear period, indicate that 22 cities have inspected all of its mines annually, 25 cities have an inspection rate below 50 percent, and 14 have never inspected a mine.

(4) Financial assurance documents that ensure the ability to pay for mine reclamation are not routinely updated. The adjustment rate for counties is about 27 percent, based on official data, and about 20 percent for cities.

(e) It is the intent of the Legislature to retain the existing structure of the act while improving the statutory relationships between state and local government entities by strengthening the interconnections between inspections, financial assurances, and reclamation plans, in order to ensure improved compliance with the provisions of this important law.

SEC. 2. Section 607 of the Public Resources Code is amended to read:

607. The work of the department shall be divided into at least the following:

- (a) California Geological Survey.
- (b) Division of Oil, Gas, and Geothermal Resources.
- (c) Division of Land Resource Protection.
- (d) ~~Office of Mine Reclamation~~ *Division of Mines*.

SEC. 3. Section 677 of the Public Resources Code is amended to read:

677. ~~The board shall nominate, and the director shall appoint, the State Geologist, who~~ (a) *A State Geologist shall be appointed and shall be responsible for the management of the California Geological Survey. The State Geologist shall either be registered in compliance with the Geologist and Geophysicist Act (Chapter 12.5 (commencing with Section 7800) of Division 3 of the Business and Professions Code) at least one year from the date of appointment, or the Board for Professional Engineers, and Land Surveyors, and Geologists may, upon the review of academic and professional experience, grant registration. The State Geologist shall possess general knowledge of mineral resources, resources and structural geology, seismology, engineering geology, and related disciplines in science and engineering, and the reclamation of mined lands and waters engineering.* The State Geologist shall advise the director regarding technical, scientific, and engineering issues, including the scientific quality of the ~~division's~~ products and activities *of the California Geological Survey*.

(b) *A State Mine Inspector shall be appointed and shall be responsible for the management of the Division of Mines. The State Mine Inspector shall either be registered in compliance with the Geologist and Geophysicist Act (Chapter 12.5 (commencing with Section 7800) of Division 3 of the Business and Professions Code) or the Professional Engineers Act (Chapter 7 (commencing with Section 6700) of Division 3 of the Business and Professions Code)*

1 at least one year from the date of appointment, or the Board for
2 Professional Engineers, Land Surveyors, and Geologists may,
3 upon the review of academic and professional experience, grant
4 registration. The State Mine Inspector shall possess general
5 knowledge of mining, mineral resources, structural geology,
6 seismology, engineering geology, and related disciplines in science
7 and engineering, and the reclamation of mined lands and waters.
8 The State Mine Inspector shall advise the director regarding
9 technical, scientific, and engineering issues, including the scientific
10 quality of the products and activities of the Division of Mines.

11 SEC. 4. Section 2006 of the Public Resources Code is amended
12 to read:

13 2006. "State Geologist" means the individual holding the office
14 created by subdivision (a) of Section 677.

15 SEC. 5. Section 2006.5 is added to the Public Resources Code,
16 to read:

17 2006.5. "State Mine Inspector" means the individual holding
18 the office created by subdivision (b) of Section 677.

19 SEC. 6. Section 2207 of the Public Resources Code is amended
20 to read:

21 2207. (a) The owner or the operator of a mining operation
22 within the state shall forward to the ~~director~~ *State Mine Inspector*
23 annually, not later than a date established by the ~~director~~, *State*
24 *Mine Inspector*, upon forms approved by the board from time to
25 time, a report that identifies all of the following:

26 (1) The name, address, and telephone number of the person,
27 company, or other owner of the mining operation.

28 (2) The name, address, and telephone number of a designated
29 agent who resides in this state, and who will receive and accept
30 service of all orders, notices, and processes of the lead agency,
31 board, ~~director~~, *State Mine Inspector*, or court.

32 (3) The location of the mining operation, its name, its mine
33 number as issued by the ~~Bureau of Mines or the director~~, *State*
34 *Mine Inspector*, its section, township, range, latitude, longitude,
35 and approximate boundaries of the mining operation marked on a
36 United States Geological Survey 7½-minute or 15-minute
37 quadrangle map.

38 (4) The lead agency.

39 (5) The approval date of the mining operation's reclamation
40 plan.

1 (6) The mining operation's status as active, idle, reclaimed, or
2 in the process of being reclaimed.

3 (7) The commodities produced by the mine and the type of
4 mining operation.

5 (8) Proof of annual inspection by the lead agency.

6 (9) Proof of financial assurances.

7 (10) Ownership of the property, including government agencies,
8 if applicable, by the assessor's parcel number, and total assessed
9 value of the mining operation.

10 (11) The approximate permitted size of the mining operation
11 subject to Chapter 9 (commencing with Section 2710), in acres.

12 (12) The approximate total acreage of land newly disturbed by
13 the mining operation during the previous calendar year.

14 (13) The approximate total of disturbed acreage reclaimed during
15 the previous calendar year.

16 (14) The approximate total unreclaimed disturbed acreage
17 remaining as of the end of the calendar year.

18 (15) The total production for each mineral commodity produced
19 during the previous year.

20 (16) A copy of any approved reclamation plan and any
21 amendments or conditions of approval to any existing reclamation
22 plan approved by the lead agency.

23 (b) (1) Every year, not later than the date established by the
24 ~~director~~, *State Mine Inspector*, the person submitting the report
25 pursuant to subdivision (a) shall forward to the lead agency, upon
26 forms furnished by the board, a report that provides all of the
27 information specified in paragraphs (1) to (16), inclusive, of
28 subdivision (a).

29 (2) The owner or operator of a mining operation shall allow
30 access to the property to any governmental agency or the agent of
31 any company providing financial assurances in connection with
32 the reclamation plan, in order that the reclamation can be carried
33 out by the entity or company, in accordance with the provisions
34 of the reclamation plan.

35 (c) Subsequent reports shall include only changes in the
36 information submitted for the items described in subdivision (a),
37 except that, instead of the approved reclamation plan, the reports
38 shall include any reclamation plan amendments approved during
39 the previous year. The reports shall state whether review of a
40 reclamation plan, financial assurances, or an interim management

1 plan is pending under subdivision (b), (c), (d), or (h) of Section
2 2770, or whether an appeal before the board or lead agency
3 governing body is pending under subdivision (e) or (h) of Section
4 2770. The ~~director~~ *State Mine Inspector* shall notify the person
5 submitting the report and the owner's designated agent in writing
6 that the report and the fee required pursuant to subdivision (d)
7 have been received, specify the mining operation's mine number
8 if one has not been issued by the ~~Bureau of Mines~~, *State Mine*
9 *Inspector*, and notify the person and agent of any deficiencies in
10 the report within 90 days of receipt. That person or agent shall
11 have 30 days from receipt of the notification to correct the noted
12 deficiencies and forward the revised reports to the ~~director~~ *State*
13 *Mine Inspector* and the lead agency. Any person who fails to
14 comply with this section, or knowingly provides incorrect or false
15 information in reports required by this section, may be subject to
16 an administrative penalty as provided in subdivision (c) of Section
17 2774.1.

18 (d) (1) The board shall impose, by regulation, pursuant to
19 paragraph (2), an annual reporting fee on, and method for collecting
20 annual fees from, each active or idle mining operation. The
21 ~~maximum~~ *minimum* fee for any single mining operation may not
22 exceed four thousand dollars (\$4,000) annually and may not be
23 less than one ~~hundred thousand~~ *thousand* dollars (~~\$100~~) (*\$1,000*) annually,
24 as adjusted for the cost of living as measured by the California
25 Consumer Price Index for all urban consumers, calendar year
26 averages, using the percentage change in the previous year,
27 beginning with the ~~2005-06~~ *2014-15* fiscal year and annually
28 thereafter.

29 (2) (A) The board shall adopt, by regulation, a schedule of fees
30 authorized under paragraph (1) to cover the department's cost in
31 carrying out this section and Chapter 9 (commencing with Section
32 2710), as reflected in the Governor's Budget, and may adopt those
33 regulations as emergency regulations. In establishing the schedule
34 of fees to be paid by each active and idle mining operation, the
35 ~~fees shall be calculated on~~ *board shall consider and establish a*
36 *cost per acre on* an equitable basis reflecting the size and type of
37 operation. ~~The board shall also consider the total assessed value~~
38 ~~of the mining operation, the acreage disturbed and undisturbed by~~
39 ~~mining activities, and the acreage subject to the reclamation plan,~~
40 *and other factors addressed by the approved reclamation plan.*

(B) Regulations adopted pursuant to this subdivision shall be adopted by the board in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The adoption of any emergency regulations pursuant to this subdivision shall be considered necessary to address an emergency and shall be considered by the Office of Administrative Law to be necessary for the immediate preservation of the public peace, health, safety, and general welfare.

(3) The total revenue generated by the reporting fees ~~may not exceed, and may be less than, the amount of three million five hundred thousand dollars (\$3,500,000), as adjusted for the cost of living as measured by the California Consumer Price Index for all urban consumers, calendar year averages, using the percentage change in the previous year, beginning with the 2005-06 fiscal year and annually thereafter shall be based on a cost per acre, subject to the approved reclamation plan, as determined by the board pursuant to paragraph (2).~~ If the ~~director~~ State Mine Inspector determines that the revenue collected during the preceding fiscal year was greater or less than the cost to operate the program, the board shall adjust the fees to compensate for the overcollection or undercollection of revenues.

(4) (A) The reporting fees established pursuant to this subdivision shall be deposited in the Mine Reclamation Account, which is hereby created. Any fees, penalties, interest, fines, or charges collected by the ~~director~~ State Mine Inspector or board pursuant to this chapter or Chapter 9 (commencing with Section 2710) shall be deposited in the Mine Reclamation Account. *The board may recommend expenditures of these funds as part of the annual budget process.* The ~~money~~ moneys in the account shall be available to the department and board, upon appropriation by the Legislature, for the purpose of carrying out this section and complying with Chapter 9 (commencing with Section 2710), which includes, but is not limited to, classification and designation of areas with mineral resources of statewide or regional significance, reclamation plan and financial assurance review, mine inspection, and enforcement.

(B) (i) In addition to reporting fees, the board shall collect five dollars (\$5) per ounce of gold and ten cents (\$0.10) per ounce of silver mined within the state and shall deposit the fees collected in the Abandoned Mine Reclamation and Minerals Fund

1 Subaccount, which is hereby created in the Mine Reclamation
2 Account. The department may expend the moneys in the
3 subaccount, upon appropriation by the Legislature, for only the
4 purposes of Section 2796.5 and as authorized herein for the
5 remediation of abandoned mines.

6 (ii) Notwithstanding subdivision (j) of Section 2796.5, fees
7 collected pursuant to clause (i) may also be used to remediate
8 features of historic abandoned mines and lands that they impact.
9 For the purposes of this section, historic abandoned mines are
10 mines for which operations have been conducted before January
11 1, 1976, and include, but are not limited to, historic gold and silver
12 mines.

13 (5) In case of late payment of the reporting fee, a penalty of not
14 less than one hundred dollars (\$100) or 10 percent of the amount
15 due, whichever is greater, plus interest at the rate of 1 ½ percent
16 per month, computed from the delinquent date of the assessment
17 until and including the date of payment, shall be assessed. New
18 mining operations that have not submitted a report shall submit a
19 report prior to commencement of operations. The new operation
20 shall submit its fee according to the reasonable fee schedule
21 adopted by the board, and the month that the report is received
22 shall become that operation's anniversary month.

23 (e) The lead agency, or the board when acting as the lead agency,
24 may impose a fee upon each mining operation to cover the
25 reasonable costs incurred in implementing this chapter and Chapter
26 9 (commencing with Section 2710).

27 (f) For purposes of this section, "mining operation" means a
28 mining operation of any kind or character whatever in this state,
29 including, but not limited to, a mining operation that is classified
30 as a "surface mining operation" as defined in Section 2735, unless
31 excepted by Section 2714. For the purposes of fee collections only,
32 "mining operation" may include one or more mines operated by
33 a single operator or mining company on one or more sites, if the
34 total annual combined mineral production for all sites is less than
35 100 troy ounces for precious metals, if precious metals are the
36 primary mineral commodity produced, or less than 100,000 short
37 tons if the primary mineral commodity produced is not precious
38 metals.

39 (g) Any information in reports submitted pursuant to subdivision
40 (a) that includes or otherwise indicates the total mineral production,

reserves, or rate of depletion of any mining operation may not be disclosed to any member of the public, as defined in subdivision (b) of Section 6252 of the Government Code. Other portions of the reports are public records unless excepted by statute. Statistical bulletins based on these reports and published under Section 2205 shall be compiled to show, for the state as a whole and separately for each lead agency, the total of each mineral produced therein. In order not to disclose the production, reserves, or rate of depletion from any identifiable mining operation, no production figure shall be published or otherwise disclosed unless that figure is the aggregated production of not less than three mining operations. If the production figure for any lead agency would disclose the production, reserves, or rate of depletion of less than three mining operations or otherwise permit the reasonable inference of the production, reserves, or rate of depletion of any identifiable mining operation, that figure shall be combined with the same figure of not less than two other lead agencies without regard to the location of the lead agencies. The bulletin shall be published annually by June 30 or as soon thereafter as practicable.

(h) The approval of a form by the board pursuant to this section is not the adoption of a regulation for purposes of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code and is not subject to that chapter.

SEC. 7. Section 2208 of the Public Resources Code is amended to read:

2208. The *State Mine Inspector*, director, or a qualified assistant may at any time enter or examine any and all mines, quarries, wells, mills, reduction works, refining works, and other mineral properties or working plants in this state in order to gather data to comply with the provisions of this chapter.

SEC. 8. Section 2717.5 is added to the Public Resources Code, to read:

2717.5. (a) An affected mine operator, a lead agency with jurisdiction over the operation, or an affected person, may appeal to the board the department's determination regarding a mining operation's placement on, removal from, or denial of placement on or removal from, the list identified in subdivision (b) of Section 2717.

(b) An appeal pursuant to subdivision (a) shall be subject to the following requirements, as applicable:

1 (1) The appeal shall be made in writing, on a form provided by
2 the board, and shall be received by the board within 15 days of the
3 operator's, lead agency, or affected person's receipt of a notice of
4 the department's determination as described in subdivision (a), or
5 within 15 days of the department's posting of the notice on its
6 Internet Web site.

7 (2) An appeal filed by a lead agency shall demonstrate good
8 cause for reversal of a determination.

9 (3) An appeal filed by an affected person other than a lead
10 agency shall demonstrate that the affected person has a sufficient
11 connection to, or direct impact from, the operation of the mine at
12 issue.

13 (4) Where the board is the lead agency, it may not appeal the
14 decision of the department but may follow the department's
15 procedures for removal of a mining operation from the list. The
16 board may hear an appeal filed by any other party pursuant to
17 subdivision (a).

18 (5) The appeal shall demonstrate, as a necessary element of the
19 appeal, that the facts and issues relevant to the appeal were brought
20 to the attention of the department prior to the department's
21 determination described in subdivision (a).

22 (c) The board shall promptly notify the department and the lead
23 agency that the appeal has been received by the board. Where the
24 appeal is filed by the lead agency or the board is the lead agency,
25 no notice to the lead agency shall be required.

26 (d) (1) A mining operation seeking placement on the list shall
27 not be placed on the list pending the final outcome of an appeal
28 filed pursuant to subdivision (a).

29 (2) A mining operation appealing the department's removal of
30 the operation from the list shall remain on the list pending the final
31 outcome of an appeal filed pursuant to subdivision (a).

32 (e) (1) (A) The board shall hear the appeal if the chair of the
33 board or his or her designated hearing officer determines the appeal
34 is within the jurisdiction of the board and the appeal raises a
35 substantial issue related to the department's determination
36 regarding a mining operation's placement on, removal from, or
37 denial of placement on or removal from, the list.

38 (B) A determination of the board's jurisdiction by the chair or
39 his or her designee shall consider all of the following:

1 (i) Whether the information presented with the appeal presents
2 any dispute of the material fact or facts supporting the department's
3 determination.

4 (ii) Whether the appeal is an attempt to challenge an enforcement
5 decision or a court decision.

6 (iii) Whether the appellant has standing.

7 (iv) Whether the appeal is timely.

8 (v) Whether the facts constituting the basis for the appeal have
9 been presented to the department prior to the department's
10 determination as described in subdivision (a).

11 (vi) Whether any relevant circumstances exist that are not
12 specifically identified but which, in the judgment of the chair or
13 his or her designee, preclude the appeal.

14 (2) If the chair or hearing officer finds, based on the criteria
15 described in paragraph (1), that the appeal is not within the
16 jurisdiction of the board or does not raise a substantial issue, the
17 chair or his or her designee shall refuse to grant the appeal and the
18 department's decision shall be deemed final for purposes of seeking
19 judicial review of that decision.

20 (f) A decision by the board pursuant to this section shall not
21 preclude any party from initiating a new proceeding to be included
22 on the list, to be maintained on the list, or to effect removal of a
23 mining operation from the list, in accordance with this section or
24 based on new or different circumstances than were determined by
25 the chair or his or her designee on a previous appeal.

26 SEC. 9. Section 2733 of the Public Resources Code is amended
27 to read:

28 2733. "Reclamation" means the combined process of land
29 treatment that minimizes water degradation, air pollution, damage
30 to aquatic or wildlife habitat, flooding, erosion, and other adverse
31 effects from surface mining operations, including adverse surface
32 effects incidental to underground mines, so that mined lands are
33 reclaimed, to a usable condition~~which~~ *that* is readily adaptable
34 for alternate land~~uses~~ *uses*, and create no danger to public health
35 or safety. The process may extend to affected lands surrounding
36 mined lands,~~and~~; may require backfilling, grading, resoiling,
37 revegetation, soil compaction, stabilization, or other measures;
38 *and shall be certified by a registered professional geologist,*
39 *geophysicist, or professional engineer.*

1 SEC. 10. Section 2770 of the Public Resources Code is
2 amended to read:

3 2770. (a) Except as provided in this section, a person shall not
4 conduct surface mining operations unless a permit is obtained
5 from, *and* a reclamation plan has been submitted to and approved
6 ~~by, and financial assurances for reclamation have been approved~~
7 by, the lead agency for the operation *and financial assurances for*
8 *reclamation pursuant to the reclamation plan have been submitted*
9 *to and approved by the director* pursuant to this article.

10 (b) A person with an existing surface mining operation who has
11 vested rights pursuant to Section 2776 and who does not have an
12 approved reclamation plan shall submit a reclamation plan to the
13 lead agency not later than March 31, 1988. If a reclamation plan
14 application is not on file by March 31, 1988, the continuation of
15 the surface mining operation is prohibited until a reclamation plan
16 is submitted to the lead agency. For purposes of this subdivision,
17 a reclamation plan may consist of all or the appropriate sections
18 of any plans or written agreements previously approved by the
19 lead agency or another agency, together with any additional
20 documents needed to substantially meet the requirements of
21 Sections 2772 and 2773 and the lead agency surface mining
22 ordinance adopted pursuant to subdivision (a) of Section 2774,
23 provided that all documents which together were proposed to serve
24 as the reclamation plan are submitted for approval to the lead
25 agency in accordance with this chapter.

26 (c) If a person with an existing surface mining operation has
27 received lead agency approval of its financial assurances for
28 reclamation prior to January 1, ~~1991~~, 2015, ~~the lead agency~~ *the director*
29 shall administratively review *and make any changes to ensure*
30 those existing financial assurances *are* in accordance with
31 subdivision (d) prior to January 1, ~~1992~~ 2016. The review of
32 existing financial assurances shall not be considered a project for
33 purposes of Division 13 (commencing with Section 21000). A
34 person with an existing surface mining operation that does not
35 have financial assurances that received ~~lead agency~~ *the director's*
36 approval prior to January 1, ~~1991~~, 2016, shall submit financial
37 assurances for reclamation *to the director* for review in accordance
38 with subdivision (d).

39 (d) The lead agency's review of a reclamation plan submitted
40 pursuant to subdivision (b) or *the director's* review of financial

1 assurances pursuant to subdivision (c) is limited to whether the
 2 plan or the financial assurances substantially meet the applicable
 3 requirements of Sections 2772, 2773, and 2773.1, and the lead
 4 agency surface mining ordinance adopted pursuant to subdivision
 5 (a) of Section 2774, but, in any event, the ~~lead agency director~~
 6 shall require that financial assurances for reclamation be sufficient
 7 to perform reclamation of lands remaining disturbed. ~~Reclamation~~
 8 *For purposes of this chapter, reclamation plans or financial*
 9 ~~assurances~~ determined to substantially meet these requirements
 10 shall be approved by the lead agency ~~for purposes of this chapter~~
 11 *and financial assurances determined to substantially meet these*
 12 *requirements shall be approved by the director.* Reclamation plans
 13 or financial assurances determined not to substantially meet these
 14 requirements shall be returned to the operator within 60 days. The
 15 operator ~~has~~ shall have 60 days to revise the plan or financial
 16 assurances to address identified deficiencies, at which time the
 17 revised plan ~~or financial assurances~~ shall be returned to the lead
 18 agency for review and approval, *or the revised reclamation plan*
 19 *shall be returned to the director for review and approval.* Except
 20 as specified in subdivision (e) or (i), ~~unless the operator has filed~~
 21 ~~on or before July 1, 1990, an appeal pursuant to subdivision (e)~~
 22 ~~with regard to nonapproval of the reclamation plan, or has filed~~
 23 ~~on or before January 1, 1994, an appeal pursuant to subdivision~~
 24 ~~(e) with regard to nonapproval of financial assurances, and that~~
 25 ~~appeal is pending before the board,~~ the continuation of the surface
 26 mining operation is prohibited until a reclamation plan *is approved*
 27 *by a lead agency* and financial assurances for reclamation are
 28 approved by the ~~lead agency director~~.

29 (e) (1) A person who, based on the evidence of the record, ~~can~~
 30 ~~substantiate claims~~ that a lead agency has either ~~(1)~~ (A) failed to
 31 act according to due process or has relied on considerations not
 32 related to the specific applicable requirements of Sections 2772,
 33 2773, and 2773.1, and the lead agency surface mining ordinance
 34 adopted pursuant to subdivision (a) of Section 2774, in reaching
 35 a decision to *approve or deny approval of a reclamation plan, or*
 36 ~~financial assurances for reclamation,~~ (2) (B) failed to act within a
 37 reasonable time of receipt of a completed application, or ~~(3)~~ (C)
 38 failed to review and approve reclamation plans ~~or financial~~
 39 ~~assurances~~ as required by subdivisions (c) and (d), may appeal that
 40 action or inaction to the board.

1 (2) *A person who, based on the evidence of the record, claims*
2 *that the director has either (A) failed to act according to due*
3 *process or has relied on considerations not related to the specific*
4 *applicable requirements of Sections 2772, 2773, and 2773.1, in*
5 *reaching a decision to approve or deny approval of financial*
6 *assurances, or (B) failed to review and approve financial*
7 *assurances as required by subdivisions (c) and (d), may appeal*
8 *that action or inaction to the board.*

9 (f) The board may decline to hear an appeal if it determines that
10 the appeal raises no substantial issues related to the lead agency's
11 *or the director's* review pursuant to this section.

12 (g) Appeals that the board does not decline to hear shall be
13 scheduled and heard at a public hearing within 45 days of the filing
14 of the appeal, or a longer period as may be mutually agreed upon
15 by the board and the person filing the appeal. In hearing an appeal,
16 the board shall only determine whether the reclamation plan or the
17 financial assurances substantially meet the applicable requirements
18 of Sections 2772, 2773, and 2773.1, and the lead agency surface
19 mining ordinance adopted pursuant to subdivision (a) of Section
20 2774. A reclamation plan or financial assurances determined to
21 meet these requirements shall be approved. A reclamation plan or
22 financial assurances determined not to meet these requirements
23 shall be returned to the ~~person filing the appeal~~ operator with a
24 notice of deficiencies, who shall be granted, once only, a period
25 of 30 days, or a longer period mutually agreed upon by the operator
26 and the board, to correct the noted deficiencies and submit the
27 revised reclamation plan *to the lead agency* or the revised financial
28 assurances to the ~~lead agency director~~ for review and approval.

29 (h) (1) Within 90 days of a surface mining operation becoming
30 idle, as defined in Section 2727.1, the operator shall submit to the
31 lead agency for review and approval, an interim management plan.
32 The review and approval of an interim management plan shall not
33 be considered a project for purposes of Division 13 (commencing
34 with Section 21000). The approved interim management plan shall
35 be considered an amendment to the surface mining operation's
36 approved reclamation plan, for purposes of this chapter. The
37 interim management plan shall provide measures the operator will
38 implement to maintain the site in compliance with this chapter,
39 including, but not limited to, all permit conditions.

1 (2) The interim management plan may remain in effect for a
2 period not to exceed five years, at which time the lead agency shall
3 do one of the following:

4 (A) Renew the interim management plan for an additional period
5 not to exceed five years, which may be renewed for one additional
6 five-year renewal period at the expiration of the first five-year
7 renewal period, if the lead agency finds that the surface mining
8 operator has complied fully with the interim management plan.

9 (B) Require the surface mining operator to commence
10 reclamation in accordance with its approved reclamation plan.

11 (3) The financial assurances required by Section 2773.1 shall
12 remain in effect during the period that the surface mining operation
13 is idle. If the surface mining operation is still idle after the
14 expiration of its interim management plan, the surface mining
15 operation shall commence reclamation in accordance with its
16 approved reclamation plan.

17 (4) Within 60 days of the receipt of the interim management
18 plan, or a longer period mutually agreed upon by the lead agency
19 and the operator, the lead agency shall review and approve the
20 plan in accordance with its ordinance adopted pursuant to
21 subdivision (a) of Section 2774, so long as the plan satisfies the
22 requirements of this subdivision, and so notify the operator in
23 writing. Otherwise, the lead agency shall notify the operator in
24 writing of any deficiencies in the plan. The operator shall have 30
25 days, or a longer period mutually agreed upon by the operator and
26 the lead agency, to submit a revised plan.

27 (5) The lead agency shall approve or deny approval of the
28 revised interim management plan within 60 days of receipt. If the
29 lead agency denies approval of the revised interim management
30 plan, the operator may appeal that action to the lead agency's
31 governing body, which shall schedule a public hearing within 45
32 days of the filing of the appeal, or a longer period mutually agreed
33 upon by the operator and the governing body.

34 (6) Unless review of an interim management plan is pending
35 before the lead agency, or an appeal is pending before the lead
36 agency's governing body, a surface mining operation that remains
37 idle for over one year after becoming idle as defined in Section
38 2727.1 without obtaining approval of an interim management plan
39 shall be considered abandoned and the operator shall commence

1 and complete reclamation in accordance with the approved
2 reclamation plan.

3 (i) An enforcement action that may be brought against a surface
4 mining operation for operating without an approved reclamation
5 plan, financial assurance, or interim management plan shall be
6 held in abeyance pending review pursuant to subdivision (b), (c),
7 (d), or (h), or the resolution of an appeal filed with the board
8 pursuant to subdivision (e), or with a lead agency governing body
9 pursuant to subdivision (h).

10 SEC. 11. Section 2772 of the Public Resources Code is
11 amended to read:

12 2772. (a) The reclamation plan shall be filed with the lead
13 agency, on a form provided by the lead agency, by any person who
14 owns, leases, or otherwise controls or operates on all, or any ~~portion~~
15 *portion*, of ~~any~~ *any* mined lands, and who plans to conduct surface
16 mining operations on the lands.

17 (b) All documentation for the reclamation plan shall be
18 submitted by the lead agency to the department at one time.

19 (c) The reclamation plan shall include all of the following
20 information and documents:

21 (1) The name and address of the surface mining operator and
22 the names and addresses of any persons designated by the operator
23 as an agent for the service of process.

24 (2) The anticipated quantity and type of minerals for which the
25 surface mining operation is to be conducted.

26 (3) The proposed dates for the initiation and termination of
27 surface mining operation.

28 (4) The maximum anticipated depth of the surface mining
29 operation.

30 (5) The size and legal description of the lands that will be
31 affected by the surface mining operation, a map that includes the
32 boundaries and topographic details of the lands, a description of
33 the general geology of the area, a detailed description of the
34 geology of the area in which surface mining is to be conducted,
35 the location of all streams, roads, railroads, and utility facilities
36 within, or adjacent to, the lands, the location of all proposed access
37 roads to be constructed in conducting the surface mining operation,
38 and the names and addresses of the owners of all surface interests
39 and mineral interests in the lands.

1 (6) A description of, and a plan for, the type of surface mining
2 to be employed, and a time schedule that will provide for the
3 completion of surface mining on each segment of the mined lands
4 so that reclamation can be initiated at the earliest possible time on
5 those portions of the mined lands that will not be subject to further
6 disturbance by the surface mining operation.

7 (7) A description of the proposed use or potential uses of the
8 mined lands after reclamation and evidence that all owners of a
9 possessory interest in the land have been notified of the proposed
10 use or potential uses.

11 (8) A description of the manner in which reclamation, adequate
12 for the proposed use or potential ~~uses~~ *uses*, will be accomplished,
13 *as certified by a registered professional geologist, geophysicist,*
14 *or professional engineer, pursuant to Section 2733*, including both
15 of the following:

16 (A) A description of the manner in which contaminants will be
17 controlled, and mining waste will be disposed.

18 (B) A description of the manner in which affected streambed
19 channels and streambanks will be rehabilitated to a condition
20 minimizing erosion and sedimentation will occur.

21 (9) An assessment of the effect of implementation of the
22 reclamation plan on future mining in the area.

23 (10) A statement that the person submitting the reclamation
24 plan accepts responsibility for reclaiming the mined lands in
25 accordance with the reclamation plan.

26 *(11) A schedule with time limits, updated annually, for*
27 *completing reclamation in accordance with the reclamation plan*
28 *and the then-current condition of the mining site.*

29 ~~(11)~~

30 (12) Any other information ~~which~~ *that* the lead agency may
31 require by ordinance.

32 (d) An item of information or a document required pursuant to
33 subdivision (c) that has already been prepared as part of a permit
34 application for the surface mining operation, or as part of an
35 environmental document prepared for the project pursuant to
36 Division 13 (commencing with Section 21000), may be included
37 in the reclamation plan by reference, if that item of information
38 or that document is attached to the reclamation plan when the lead
39 agency submits the reclamation plan to the director for review. To
40 the extent that the information or document referenced in the

1 reclamation plan is used to meet the requirements of subdivision
2 (c), the information or document shall become part of the
3 reclamation plan and shall be subject to all other requirements of
4 this article.

5 (e) Nothing in this section is intended to limit or expand the
6 department's authority or responsibility to review a document in
7 accordance with Division 13 (commencing with Section 21000).

8 SEC. 12. Section 2773.1 of the Public Resources Code is
9 amended to read:

10 2773.1. (a) Lead agencies shall require financial assurances,
11 *as determined by the director based on the most recent inspection*,
12 of each surface mining operation to ensure reclamation is
13 performed in accordance with the surface mining operation's
14 approved reclamation plan, as follows:

15 (1) Financial assurances may take the form of surety bonds
16 executed by an admitted surety insurer, as defined in subdivision
17 (a) of Section 995.120 of the Code of Civil Procedure, irrevocable
18 letters of credit, trust funds, or other forms of financial assurances
19 specified by the board pursuant to subdivision (e), ~~which~~ *that* the
20 ~~lead agency~~ *director* reasonably determines are adequate to perform
21 reclamation in accordance with the surface mining operation's
22 approved reclamation plan.

23 (2) The financial assurances shall remain in effect for the
24 duration of the surface mining operation and any additional period
25 until reclamation is completed.

26 (3) (A) The amount of financial assurances required of a surface
27 mining operation for any one year shall be adjusted annually *by*
28 *the director* to account for new lands disturbed by surface mining
29 operations, inflation, and reclamation of lands accomplished in
30 accordance with the approved reclamation plan.

31 (B) *The annual adjustment of financial assurances is not subject*
32 *to the procedures specified in paragraph (3) of subdivision (d) of*
33 *Section 2774 unless made in response to an amendment to an*
34 *existing reclamation plan.*

35 (4) The financial assurances shall be made payable to the lead
36 agency and the department. Financial assurances that were
37 approved by the lead agency prior to January 1, 1993, and were
38 made payable to the State Geologist shall be considered payable
39 to the department for purposes of this chapter. However, if a surface
40 mining operation has received approval of its financial assurances

1 from a public agency other than the lead agency, the ~~lead agency~~
2 *director* shall deem those financial assurances adequate for
3 purposes of this section, or shall credit them toward fulfillment of
4 the financial assurances required by this section, if they are made
5 payable to the public agency, the lead agency, and the department
6 and otherwise meet the requirements of this section. In any event,
7 if a lead agency and one or more public agencies exercise
8 jurisdiction over a surface mining operation, the total amount of
9 financial assurances required by the ~~lead agency~~ *director* and the
10 public agencies for any one year shall not exceed that amount
11 which is necessary to perform reclamation of lands remaining
12 disturbed. For purposes of this paragraph, a “public agency” may
13 include a federal agency.

14 (b) If the lead agency or the board, following a public hearing,
15 determines that the operator is financially incapable of performing
16 reclamation in accordance with its approved reclamation plan, or
17 has abandoned its surface mining operation without commencing
18 reclamation, either the lead agency or the director shall do all of
19 the following:

20 (1) Notify the operator by personal service or certified mail that
21 the lead agency or the director intends to take appropriate action
22 to forfeit the financial assurances and specify the reasons for so
23 doing.

24 (2) (A) Allow the operator 60 days to commence or cause the
25 commencement of reclamation in accordance with its approved
26 reclamation plan and require that reclamation be completed within
27 the time limits specified in the approved reclamation plan or some
28 other time period mutually agreed upon by the lead agency ~~or the~~
29 ~~director~~ and the operator.

30 (B) *If no time period is specified in the reclamation plan, or if*
31 *the time period specified is determined by the lead agency to be*
32 *inappropriate for the condition of the site, the lead agency shall*
33 *determine a time period for reclamation to be completed if an*
34 *agreement for such a time period cannot be reached between the*
35 *lead agency and the operator.*

36 (3) Proceed to take appropriate action to require forfeiture of
37 the financial assurances if the operator does not substantially
38 comply with paragraph (2).

39 (4) Use the proceeds from the forfeited financial assurances to
40 conduct and complete reclamation in accordance with the approved

1 reclamation plan. In no event shall the financial assurances be used
2 for any other purpose. The operator is responsible for the costs of
3 conducting and completing reclamation in accordance with the
4 approved reclamation plan ~~which~~ *that* are in excess of the proceeds
5 from the forfeited financial assurances.

6 (c) Financial assurances shall no longer be required of a surface
7 mining operation, and shall be released, upon written notification
8 by the lead agency, *with the concurrence of the director*, which
9 shall be forwarded to the ~~operator and the director~~, *operator*, that
10 reclamation has been completed in accordance with the approved
11 reclamation plan. If a mining operation is sold or ownership is
12 transferred to another person, the existing financial assurances
13 shall remain in force and shall not be released by the lead agency
14 *or the director* until new financial assurances are secured from the
15 new owner and have been approved by the ~~lead agency~~ *director*
16 in accordance with Section 2770.

17 (d) (1) The lead agency shall have primary responsibility to
18 seek forfeiture of financial assurances and to reclaim mine sites
19 under subdivision (b). However, in cases where the board is not
20 the lead agency pursuant to Section 2774.4, the director may act
21 to seek forfeiture of financial assurances and reclaim mine sites
22 pursuant to subdivision (b) only if both of the following occurs:

23 ~~(1)~~
24 (A) The financial incapability of the operator or the abandonment
25 of the mining operation has come to the attention of the director.

26 ~~(2)~~
27 (B) The lead agency has been notified in writing by the director
28 of the financial incapability of the operator or the abandonment
29 of the mining operation for at least 15 days, and has not taken
30 appropriate measures to seek forfeiture of the financial assurances
31 and reclaim the mine site; and one of the following has occurred:

32 ~~(A)~~
33 (i) The lead agency has been notified in writing by the director
34 that failure to take appropriate measures to seek forfeiture of the
35 financial assurances or to reclaim the mine site shall result in
36 actions being taken against the lead agency under Section 2774.4.

37 ~~(B)~~
38 (ii) The director determines that there is a violation that amounts
39 to an imminent and substantial endangerment to the public health,
40 safety, or to the environment.

1 ~~(C)~~

2 (iii) The lead agency notifies the director in writing that its good
3 faith attempts to seek forfeiture of the financial assurances have
4 not been successful.

5 ~~The director shall comply with subdivision (b)~~

6 (2) *The director, in seeking forfeiture of financial assurances
7 and reclaiming mine-sites, shall do all of the following:*

8 (A) *Notify the operator by personal service or certified mail
9 that the director intends to take appropriate action to forfeit the
10 financial assurances and specify the reasons for so doing.*

11 (B) (i) *Allow the operator 60 days to commence or cause the
12 commencement of reclamation in accordance with its approved
13 reclamation plan and require that reclamation be completed within
14 the time limits specified in the approved reclamation plan or some
15 other time period mutually agreed upon by the director and the
16 operator.*

17 (ii) *If no time period is specified in the reclamation plan, or if
18 the time period specified is determined by the director to be
19 inappropriate for the condition of the site, the director shall
20 determine a time period for reclamation to be completed if an
21 agreement for such a time period cannot be reached between the
22 director and the operator pursuant to clause (i).*

23 (C) *Proceed to take appropriate action to require forfeiture of
24 the financial assurances if the operator does not substantially
25 comply with subparagraph (B).*

26 (D) *Use the proceeds from the forfeited financial assurances to
27 conduct and complete reclamation in accordance with the approved
28 reclamation plan. In no event shall the financial assurances be
29 used for any other purpose. The operator shall be responsible for
30 the costs of conducting and completing reclamation in accordance
31 with the approved reclamation plan that are in excess of the
32 proceeds from the forfeited financial assurances.*

33 (e) The board may adopt regulations specifying financial
34 assurance mechanisms other than surety bonds, irrevocable letters
35 of credit, and trust funds, ~~which~~ *that* the board determines are
36 reasonably available and adequate to ensure reclamation pursuant
37 to this chapter, but these mechanisms may not include financial
38 tests, or surety bonds executed by one or more personal sureties.
39 These mechanisms may include reclamation bond pool programs.

1 (f) ~~On or before March 1, 1993, the~~ *The* board shall adopt, *and*
2 *update as required*, guidelines to implement this section. The
3 guidelines are exempt from the requirements of Chapter 3.5
4 (commencing with Section 11340) of Part 1 of Division 3 of Title
5 2 of the Government Code, and are not subject to review by the
6 Office of Administrative Law.

7 SEC. 13. Section 2774 of the Public Resources Code is
8 amended to read:

9 2774. (a) Every lead agency shall adopt ordinances in
10 accordance with state policy that establish procedures for the
11 review and approval of reclamation plans, ~~and receipt of~~ financial
12 assurances *approved by the director*, and the issuance of a permit
13 to conduct surface mining operations, except that any lead agency
14 without an active surface mining operation in its jurisdiction may
15 defer adopting an implementing ordinance until the filing of a
16 permit application. The ordinances shall establish procedures
17 requiring at least one public hearing and shall be periodically
18 reviewed by the lead agency and revised, as necessary, to ensure
19 that the ordinances continue to be in accordance with state policy.

20 (b) ~~The lead agency director~~ shall conduct an inspection of a
21 surface mining operation ~~within six months~~ *one year* of receipt by
22 ~~the lead agency State Mine Inspector~~ of the surface mining
23 operation's report submitted pursuant to Section 2207, solely to
24 determine whether the surface mining operation is in compliance
25 with this chapter. In no event shall ~~a lead agency~~ *the director*
26 inspect a surface mining operation less than once in any calendar
27 year. ~~The lead agency director~~ may cause an inspection to be
28 conducted by a state licensed geologist, state licensed civil
29 engineer, state licensed landscape architect, or state licensed
30 forester, who is experienced in land reclamation and who has not
31 been employed by a surface mining operation within the
32 jurisdiction of the lead agency in any capacity during the previous
33 12 months. All inspections shall be conducted using a form
34 developed by the department and approved by the board that shall
35 include the professional licensing and disciplinary information of
36 the person who conducted the inspection. The operator shall be
37 solely responsible for the reasonable cost of the inspection. The
38 ~~lead agency director~~ shall notify ~~the director~~ *lead agency* within
39 30 days of the date of completion of the inspection that the
40 inspection has been conducted. The notice shall contain a statement

1 regarding the surface mining operation's compliance with this
2 chapter, shall include a copy of the completed inspection form,
3 and shall specify which aspects of the surface mining operations,
4 if any, are inconsistent with this chapter. If the surface mining
5 operation has a review of its reclamation plan, financial assurances,
6 or an interim management plan pending under subdivision (b), (c),
7 (d), or (h) of Section 2770, or an appeal pending before the board
8 or lead agency governing body under subdivision (e) or (h) of
9 Section 2770, the notice shall so indicate. ~~The lead agency director~~
10 shall forward to the operator a copy of the notice, a copy of the
11 completed inspection form, and any supporting documentation,
12 including, but not limited to, any inspection report prepared by the
13 geologist, civil engineer, landscape architect, or forester, who
14 conducted the inspection.

15 (c) Before approving a surface mining operation's reclamation
16 ~~plan, financial assurances, including existing financial assurances~~
17 ~~reviewed by the lead agency~~ *plan* pursuant to subdivision (c) of
18 Section 2770, or any amendments, the lead agency shall submit
19 ~~the plan, assurances, plan~~ or amendments to the director for review.
20 All documentation for that submission shall be submitted to the
21 director at one time. When the lead agency submits a reclamation
22 plan or plan amendments to the director for review, the lead agency
23 shall also submit to the director, for use in reviewing the
24 reclamation plan or plan amendments, information from any related
25 document prepared, adopted, or certified pursuant to Division 13
26 (commencing with Section 21000), and shall submit any other
27 pertinent information. The lead agency shall certify to the director
28 that the reclamation plan is *complete and* in compliance with the
29 applicable requirements of this chapter and Article 1 (commencing
30 with Section 3500) of Chapter 8 of Division 2 of Title 14 of the
31 California Code of Regulations and the lead agency's mining
32 ordinance in effect at the time that the reclamation plan is submitted
33 to the director for review.

34 (d) (1) The director shall have 30 days from the date of receipt
35 of a *complete* reclamation plan or *complete* plan amendments
36 submitted pursuant to subdivision ~~(e)~~, and ~~45 days from the date~~
37 ~~of receipt of financial assurances submitted pursuant to subdivision~~
38 ~~(e); (c)~~ to prepare written comments, if the director so chooses.
39 The lead agency shall evaluate written comments received from
40 the director relating to the reclamation ~~plan~~, *plan* or plan

1 amendments, ~~or financial assurances~~ within a reasonable amount
2 of time.

3 (2) The lead agency shall prepare a written response to the
4 director's comments describing the disposition of the major issues
5 raised by the director's comments, and submit the lead agency's
6 proposed response to the director at least 30 days prior to approval
7 of the reclamation ~~plan, plan or plan amendment, or financial~~
8 ~~assurance amendment~~. The lead agency's response to the director's
9 comments shall describe whether the lead agency proposes to adopt
10 the director's comments to the reclamation ~~plan, plan or plan~~
11 ~~amendment, or financial assurance amendment~~. If the lead agency
12 does not propose to adopt the director's comments, the lead agency
13 shall specify, in detail, why the lead agency proposes not to adopt
14 the comments. Copies of any written comments received and
15 responses prepared by the lead agency shall be forwarded to the
16 operator. The lead agency shall also give the director at least 30
17 days' notice of the time, place, and date of the hearing before the
18 lead agency at which time the reclamation ~~plan, plan or plan~~
19 ~~amendment, or financial assurance amendment~~ is scheduled to be
20 approved by the lead agency. If no hearing is required by this
21 chapter, or by the local ordinance, or other state law, then the lead
22 agency shall provide 30 days' notice to the director that it intends
23 to approve the reclamation ~~plan, plan or plan amendment, or~~
24 ~~financial assurance amendment~~. The lead agency shall send to the
25 director its final response to the director's comments within 30
26 days following its approval of the reclamation ~~plan, plan or plan~~
27 ~~amendment, or financial assurance amendment~~ during which period
28 the department retains all powers, duties, and authorities of this
29 chapter.

30 (3) (A) *Prior to approving initial financial assurances for a*
31 *reclamation plan or any amendments, pursuant to subdivision (a)*
32 *of Section 2770, the director shall have 45 days from the date of*
33 *receipt of a complete reclamation plan or complete plan*
34 *amendments submitted pursuant to subdivision (c) to prepare*
35 *financial assurances for reclamation pursuant to the proposed*
36 *reclamation plan and to submit the proposed financial assurances*
37 *to the lead agency for review.*

38 (B) *The lead agency shall have 30 days from the date of its*
39 *receipt of the financial assurances to evaluate the financial*

1 *assurances prepared by the director and to submit written*
2 *comments, if the lead agency so chooses.*

3 *(C) The director shall evaluate any written comments received*
4 *from the lead agency pursuant to subparagraph (B) and shall*
5 *prepare a written response to the lead agency's comments,*
6 *describing the disposition of the major issues raised by the lead*
7 *agency's comments. The response shall indicate whether the*
8 *director proposes to adopt the lead agency's comments or, if not,*
9 *shall specify, in detail, why the director does not propose to adopt*
10 *the lead agency's comments. Copies of any written comments*
11 *received and responses prepared by the director shall be forwarded*
12 *to the operator. The director shall submit the response and the*
13 *approved financial assurances to the lead agency and to the*
14 *operator within 30 days of receipt of the lead agency's comments.*

15 ~~(3)~~

16 *(4) To the extent that there is a conflict between the comments*
17 *of a trustee agency or a responsible agency that are based on the*
18 *agency's statutory or regulatory authority and the comments of*
19 *other commenting agencies which are received by the lead agency*
20 *pursuant to Division 13 (commencing with Section 21000)*
21 *regarding a reclamation plan or plan amendments, the lead agency*
22 *shall consider only the comments of the trustee agency or*
23 *responsible agency.*

24 *(e) A lead agency shall notify the director of the filing of an*
25 *application for a permit to conduct surface mining operations*
26 *within 30 days of an application being filed with the lead agency.*
27 ~~*By July 1, 1991, each lead agency shall submit to the director for*~~
28 ~~*every active or idle mining operation within its jurisdiction, a copy*~~
29 ~~*of the mining permit required pursuant to Section 2774, and any*~~
30 ~~*conditions or amendments to those permits. By July 1 of each*~~
31 ~~*subsequent year, the lead agency shall submit to the director for*~~
32 ~~*each active or idle mining operation a copy of any permit or*~~
33 ~~*reclamation plan amendments, as applicable, or a statement that*~~
34 ~~*there have been no changes during the previous year. Failure to*~~
35 ~~*file with the director the information required under this section*~~
36 ~~*shall be cause for action under Section 2774.4.*~~

37 SEC. 14. Section 2774.1 of the Public Resources Code is
38 amended to read:

39 2774.1. (a) Except as provided in subdivision (i) of Section
40 2770, if the lead agency or the director determines, based upon an

1 annual inspection pursuant to Section 2774, or otherwise confirmed
2 by an inspection of the mining operation, that a surface mining
3 operation is not in compliance with this chapter, the lead agency
4 or the director ~~may~~ *shall* notify the operator of that violation by
5 personal service or certified mail. *The notice of violation shall*
6 *specify the remedial steps to be taken to correct any noncompliance*
7 *identified in the notice, as well as a reasonable time for compliance*
8 *of each instance of noncompliance if compliance cannot reasonably*
9 *be attained within 30 days of the date of the notice.* If ~~the~~ a
10 violation extends beyond 30 days after the date of the lead agency's
11 or the director's notification, *unless the operator has accepted a*
12 *scope of work and schedule, agreed to by the lead agency or the*
13 *director, for achieving compliance,* the lead agency or the director
14 ~~may~~ *shall* issue an order by personal service or certified mail
15 requiring the operator to comply with this chapter or, if the operator
16 does not have an approved reclamation plan or financial assurances,
17 cease all further mining activities.

18 (b) An order issued under subdivision (a) shall not take effect
19 until the operator has been provided a hearing before the lead
20 agency for orders issued by the lead agency, or board for orders
21 issued by the director, concerning the alleged violation. An order
22 issued under subdivision (a) shall specify which aspects of the
23 surface mine's activities or operations are inconsistent with this
24 chapter, shall specify a time for compliance that the lead agency
25 or director determines is reasonable, taking into account the
26 seriousness of the violation and any good faith efforts to comply
27 with applicable requirements, and shall set a date for the hearing,
28 which shall not be sooner than 30 days after the date of the order.

29 (c) An operator who violates or fails to comply with an order
30 issued under subdivision (a) after the order's effective date, as
31 provided in subdivision (b), or who fails to submit a report to the
32 ~~director~~ *State Mine Inspector* or lead agency as required by Section
33 2207, shall be subject to an order by the lead agency or the director
34 imposing an administrative penalty of not more than five thousand
35 dollars (\$5,000) per day, assessed from the original date of
36 noncompliance with this chapter or Section 2207. The penalty may
37 be imposed administratively by the lead agency or the director. In
38 determining the amount of the administrative penalty, the lead
39 agency or the director shall take into consideration the nature,
40 circumstances, extent, and gravity of the violation or violations,

1 any prior history of violations, the degree of culpability, economic
2 savings, if any, resulting from the violation, and any other matters
3 justice may require. Orders setting administrative penalties shall
4 become effective upon issuance of the order and payment shall be
5 made to the lead agency or the director within 30 days, unless the
6 operator petitions the legislative body of the lead agency, the board,
7 or the superior court for review as provided in Section 2774.2. An
8 order shall be served by personal service or by certified mail upon
9 the operator. Penalties collected by the director shall not be used
10 for purposes other than to cover the reasonable costs incurred by
11 the director *or the State Mine Inspector* in implementing this
12 chapter or Section 2207.

13 (d) If the lead agency or the director determines that the surface
14 mine is not in compliance with this chapter, so that the surface
15 mine presents an imminent and substantial endangerment to the
16 public health or the environment, the lead agency or the Attorney
17 General, on behalf of the director, may seek an order from a court
18 of competent jurisdiction enjoining that operation.

19 (e) Upon a complaint by the director, the department, or the
20 board, the Attorney General may bring an action to recover
21 administrative penalties under this section, and penalties under
22 Section 2207, in any court of competent jurisdiction in this state
23 against any person violating any provision of this chapter or Section
24 2207, or any regulation adopted pursuant to this chapter or Section
25 2207. The Attorney General may bring this action on his or her
26 own initiative if, after examining the complaint and the evidence,
27 he or she believes a violation has occurred. The Attorney General
28 may also seek an order from a court of competent jurisdiction
29 compelling the operator to comply with this chapter and Section
30 2207.

31 (f) (1) The lead agency has primary responsibility for enforcing
32 this chapter and Section 2207. In cases where the board is not the
33 lead agency pursuant to Section 2774.4, enforcement actions may
34 be initiated by the director pursuant to this section only after the
35 violation has come to the attention of the director and either of the
36 following occurs:

37 (A) The lead agency has been notified by the director in writing
38 of the violation for at least 30 days, and has not taken appropriate
39 enforcement action, which may include failing to issue an order

1 to comply within a reasonable time after issuing a notice of
2 violation.

3 (B) The director determines that there is a violation that amounts
4 to an imminent and substantial endangerment to the public health
5 or safety, or to the environment.

6 (2) The director shall comply with this section in initiating
7 enforcement actions.

8 (g) Remedies under this section are in addition to, and do not
9 supersede or limit, any and all other remedies, civil or criminal.

10 SEC. 15. Section 2774.4 of the Public Resources Code is
11 amended to read:

12 2774.4. (a) If the board finds that a lead agency either has (1)
13 approved reclamation plans or, *prior to January 1, 2015*, financial
14 assurances—~~which~~ *that* are not consistent with this chapter, (2)
15 failed, *prior to January 1, 2015*, to inspect or cause the inspection
16 of surface mining operations as required by this chapter, (3) failed
17 to seek forfeiture of financial assurances and to carry out
18 reclamation of surface mining operations as required by this
19 chapter, (4) failed to take appropriate enforcement actions as
20 required by this chapter, (5) intentionally misrepresented the results
21 of inspections required under this chapter, or (6) failed to submit
22 information to the department as required by this chapter, the board
23 shall exercise any of the powers of that lead agency under this
24 chapter, except for permitting authority.

25 (b) If, no sooner than three years after the board has taken action
26 pursuant to subdivision (a), the board finds, after a public hearing,
27 that a lead agency has corrected its deficiencies in implementing
28 and enforcing this chapter, and the rules and regulations adopted
29 pursuant to this chapter, the board shall restore to the lead agency
30 the powers assumed by the board pursuant to subdivision (a).

31 (c) Before taking any action pursuant to subdivision (a), the
32 board shall first notify the lead agency of the identified
33 deficiencies, and allow the lead agency 45 days to correct the
34 deficiencies to the satisfaction of the board. If the lead agency has
35 not corrected the deficiencies to the satisfaction of the board within
36 the 45-day period, the board shall hold a public hearing within the
37 lead agency's area of jurisdiction, upon a 45-day written notice
38 given to the public in at least one newspaper of general circulation
39 within the city or county, and directly mailed to the lead agency
40 and to all surface mining operators within the lead agency's

jurisdiction who have submitted reports as required by Section 2207.

(d) Affected surface mining operators and interested persons have the right, at the public hearing, to present oral and written evidence on the matter being considered. The board may, at the public hearing, place reasonable limits on the right of affected surface mining operators and interested persons to question and solicit testimony.

(e) If, after conducting the public hearing required by subdivision (c), the board decides to take action pursuant to subdivision (a), the board shall, based on the record of the public hearing, adopt written findings which explain all of the following:

(1) The action to be taken by the board.

(2) Why the board decided to take the action.

(3) Why the action is authorized by, and meets the requirements of, subdivision (a).

In addition, the findings shall address the significant issues raised, or written evidence presented, by affected surface mining operators, interested persons, or the lead agency. The transcript of testimony and exhibits, together with all papers and requests filed in the proceedings, shall constitute the exclusive record for decision by the board.

(f) The lead agency, any affected surface mining operator, or any interested person who has presented oral or written evidence at the public hearing before the board pursuant to subdivision (d) may obtain review of the board's action taken pursuant to subdivision (a) by filing in the superior court a petition for writ of mandate within 30 days following the issuance of the board's decision. Section 1094.5 of the Code of Civil Procedure governs judicial proceedings pursuant to this subdivision, except that in every case the court shall exercise its independent judgment. If a petition for a writ of mandate is not filed within the time limits set by this subdivision, the board's action under subdivision (a) shall not be subject to review by any court or agency.

(g) (1) *A lead agency may unilaterally and voluntarily relinquish its responsibilities under this chapter, and the board shall assume those responsibilities.*

(2) (A) *No sooner than three years after relinquishing its lead agency responsibilities, the lead agency may request the board to authorize it to resume its role as a lead agency.*

1 (B) If the board finds, after holding a public hearing as
2 described in subdivision (d), that the lead agency has corrected
3 all deficiencies, if any, pursuant to subdivision (a) in implementing
4 and enforcing this chapter and its implementing regulations, the
5 board shall restore to the agency the lead agency powers assumed
6 by the board pursuant to this subdivision.

7 SEC. 16. No reimbursement is required by this act pursuant to
8 Section 6 of Article XIII B of the California Constitution because
9 a local agency or school district has the authority to levy service
10 charges, fees, or assessments sufficient to pay for the program or
11 level of service mandated by this act, within the meaning of Section
12 17556 of the Government Code.